
SUBSTITUTE SENATE BILL 5718

State of Washington

61st Legislature

2009 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Regala, Stevens, Holmquist, Hobbs, Carrell, and Hatfield; by request of Attorney General)

READ FIRST TIME 02/25/09.

1 AN ACT Relating to the commitment of sexually violent predators;
2 amending RCW 71.09.020, 71.09.025, 71.09.030, 71.09.040, 71.09.050,
3 71.09.060, 71.09.080, 71.09.090, 71.09.092, 71.09.096, 71.09.098,
4 71.09.112, and 71.09.350; adding a new section to chapter 71.09 RCW;
5 creating a new section; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 71.09.020 and 2006 c 303 s 10 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Department" means the department of social and health
12 services.

13 (2) "Health care facility" means any hospital, hospice care center,
14 licensed or certified health care facility, health maintenance
15 organization regulated under chapter 48.46 RCW, federally qualified
16 health maintenance organization, federally approved renal dialysis
17 center or facility, or federally approved blood bank.

18 (3) "Health care practitioner" means an individual or firm licensed
19 or certified to engage actively in a regulated health profession.

1 (4) "Health care services" means those services provided by health
2 professionals licensed pursuant to RCW 18.120.020(4).

3 (5) "Health profession" means those licensed or regulated
4 professions set forth in RCW 18.120.020(4).

5 (6) "Less restrictive alternative" means court-ordered treatment in
6 a setting less restrictive than total confinement which satisfies the
7 conditions set forth in RCW 71.09.092. A less restrictive alternative
8 may not include placement in the community protection program as
9 pursuant to RCW 71A.12.230.

10 (7) "Likely to engage in predatory acts of sexual violence if not
11 confined in a secure facility" means that the person more probably than
12 not will engage in such acts if released unconditionally from detention
13 on the sexually violent predator petition. Such likelihood must be
14 evidenced by a recent overt act if the person is not totally confined
15 at the time the petition is filed under RCW 71.09.030.

16 (8) "Mental abnormality" means a congenital or acquired condition
17 affecting the emotional or volitional capacity which predisposes the
18 person to the commission of criminal sexual acts in a degree
19 constituting such person a menace to the health and safety of others.

20 (9) "Personality disorder" means an enduring pattern of inner
21 experience and behavior that deviates markedly from the expectations of
22 the individual's culture, is pervasive and inflexible, has onset in
23 adolescence or early adulthood, is stable over time and leads to
24 distress or impairment. Purported evidence of a personality disorder
25 must be supported by testimony of a licensed forensic psychologist or
26 psychiatrist.

27 (10) "Predatory" means acts directed towards: (a) Strangers; (b)
28 individuals with whom a relationship has been established or promoted
29 for the primary purpose of victimization; or (c) persons of casual
30 acquaintance with whom no substantial personal relationship exists.

31 ((+10+)) (11) "Prosecuting agency" means the prosecuting attorney
32 of the county where the person was convicted or charged or the attorney
33 general if requested by the prosecuting attorney, as provided in RCW
34 71.09.030.

35 (12) "Recent overt act" means any act ((or)), threat, or
36 combination thereof that has either caused harm of a sexually violent
37 nature or creates a reasonable apprehension of such harm in the mind of

1 an objective person who knows of the history and mental condition of
2 the person engaging in the act or behaviors.

3 ~~((+11+))~~ (13) "Risk potential activity" or "risk potential
4 facility" means an activity or facility that provides a higher
5 incidence of risk to the public from persons conditionally released
6 from the special commitment center. Risk potential activities and
7 facilities include: Public and private schools, school bus stops,
8 licensed day care and licensed preschool facilities, public parks,
9 publicly dedicated trails, sports fields, playgrounds, recreational and
10 community centers, churches, synagogues, temples, mosques, public
11 libraries, public and private youth camps, and others identified by the
12 department following the hearings on a potential site required in RCW
13 71.09.315. For purposes of this chapter, "school bus stops" does not
14 include bus stops established primarily for public transit.

15 ~~((+12+))~~ (14) "Secretary" means the secretary of social and health
16 services or the secretary's designee.

17 ~~((+13+))~~ (15) "Secure facility" means a residential facility for
18 persons civilly confined under the provisions of this chapter that
19 includes security measures sufficient to protect the community. Such
20 facilities include total confinement facilities, secure community
21 transition facilities, and any residence used as a court-ordered
22 placement under RCW 71.09.096.

23 ~~((+14+))~~ (16) "Secure community transition facility" means a
24 residential facility for persons civilly committed and conditionally
25 released to a less restrictive alternative under this chapter. A
26 secure community transition facility has supervision and security, and
27 either provides or ensures the provision of sex offender treatment
28 services. Secure community transition facilities include but are not
29 limited to the facility established pursuant to RCW 71.09.250(1)(a)(i)
30 and any community-based facilities established under this chapter and
31 operated by the secretary or under contract with the secretary.

32 ~~((+15+))~~ (17) "Sexually violent offense" means an act committed on,
33 before, or after July 1, 1990, that is: (a) An act defined in Title 9A
34 RCW as rape in the first degree, rape in the second degree by forcible
35 compulsion, rape of a child in the first or second degree, statutory
36 rape in the first or second degree, indecent liberties by forcible
37 compulsion, indecent liberties against a child under age fourteen,
38 incest against a child under age fourteen, or child molestation in the

1 first or second degree; (b) a felony offense in effect at any time
2 prior to July 1, 1990, that is comparable to a sexually violent offense
3 as defined in (a) of this subsection, or any federal or out-of-state
4 conviction for a felony offense that under the laws of this state would
5 be a sexually violent offense as defined in this subsection; (c) an act
6 of murder in the first or second degree, assault in the first or second
7 degree, assault of a child in the first or second degree, kidnapping in
8 the first or second degree, burglary in the first degree, residential
9 burglary, or unlawful imprisonment, which act, either at the time of
10 sentencing for the offense or subsequently during civil commitment
11 proceedings pursuant to this chapter, has been determined beyond a
12 reasonable doubt to have been sexually motivated, as that term is
13 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28
14 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
15 to commit one of the felonies designated in (a), (b), or (c) of this
16 subsection.

17 ((+16+)) (18) "Sexually violent predator" means any person who has
18 been convicted of or charged with a crime of sexual violence and who
19 suffers from a mental abnormality or personality disorder which makes
20 the person likely to engage in predatory acts of sexual violence if not
21 confined in a secure facility.

22 ((+17+)) (19) "Total confinement facility" means a secure facility
23 that provides supervision and sex offender treatment services in a
24 total confinement setting. Total confinement facilities include the
25 special commitment center and any similar facility designated as a
26 total confinement facility by the secretary.

27 **Sec. 2.** RCW 71.09.025 and 2008 c 213 s 11 are each amended to read
28 as follows:

29 (1)(a) When it appears that a person may meet the criteria of a
30 sexually violent predator as defined in RCW 71.09.020 (16), the agency
31 with jurisdiction shall refer the person in writing to the prosecuting
32 attorney of the county (~~where that person was charged~~) in which an
33 action under this chapter may be filed pursuant to RCW 71.09.030 and
34 the attorney general, three months prior to:

35 (i) The anticipated release from total confinement of a person who
36 has been convicted of a sexually violent offense;

1 (ii) The anticipated release from total confinement of a person
2 found to have committed a sexually violent offense as a juvenile;

3 (iii) Release of a person who has been charged with a sexually
4 violent offense and who has been determined to be incompetent to stand
5 trial pursuant to RCW 10.77.086(4); or

6 (iv) Release of a person who has been found not guilty by reason of
7 insanity of a sexually violent offense pursuant to RCW 10.77.020(3).

8 (b) The agency shall provide the (~~prosecutor~~) prosecuting agency
9 with all relevant information including but not limited to the
10 following information:

11 (i) A complete copy of the institutional records compiled by the
12 department of corrections relating to the person, and any such out-of-
13 state department of corrections' records, if available;

14 (ii) A complete copy, if applicable, of any file compiled by the
15 indeterminate sentence review board relating to the person;

16 (iii) All records relating to the psychological or psychiatric
17 evaluation and/or treatment of the person;

18 (iv) A current record of all prior arrests and convictions, and
19 full police case reports relating to those arrests and convictions; and

20 (v) A current mental health evaluation or mental health records
21 review.

22 (c) The prosecuting agency has the authority, consistent with RCW
23 72.09.345(3), to obtain all records relating to the person if the
24 prosecuting agency deems such records are necessary to fulfill its
25 duties under this chapter. The prosecuting agency may only disclose
26 such records in the course of performing its duties pursuant to this
27 chapter, unless otherwise authorized by law.

28 (d) The prosecuting agency has the authority to utilize the inquiry
29 judge procedures of chapter 10.27 RCW prior to the filing of any action
30 under this chapter to seek the issuance of compulsory process for the
31 production of any records necessary for a determination of whether to
32 seek the civil commitment of a person under this chapter. Any records
33 obtained pursuant to this process may only be disclosed by the
34 prosecuting agency in the course of performing its duties pursuant to
35 this chapter, or unless otherwise authorized by law.

36 (2) (~~This section applies to acts committed before, on, or after~~
37 ~~March 26, 1992.~~

1 ~~(3)~~) The agency, its employees, and officials shall be immune from
2 liability for any good-faith conduct under this section.

3 ~~((4))~~ (3) As used in this section, "agency with jurisdiction"
4 means that agency with the authority to direct the release of a person
5 serving a sentence or term of confinement and includes the department
6 of corrections, the indeterminate sentence review board, and the
7 department of social and health services.

8 **Sec. 3.** RCW 71.09.030 and 2008 c 213 s 12 are each amended to read
9 as follows:

10 (1) A petition may be filed alleging that a person is a sexually
11 violent predator and stating sufficient facts to support such
12 allegation when it appears that: ~~((1))~~ (a) A person who at any time
13 previously has been convicted of a sexually violent offense is about to
14 be released from total confinement ~~((on, before, or after July 1,~~
15 ~~1990))~~; ~~((2))~~ (b) a person found to have committed a sexually violent
16 offense as a juvenile is about to be released from total confinement
17 ~~((on, before, or after July 1, 1990))~~; ~~((3))~~ (c) a person who has
18 been charged with a sexually violent offense and who has been
19 determined to be incompetent to stand trial is about to be released, or
20 has been released ~~((on, before, or after July 1, 1990))~~, pursuant to
21 RCW 10.77.086(4); ~~((4))~~ (d) a person who has been found not guilty by
22 reason of insanity of a sexually violent offense is about to be
23 released, or has been released ~~((on, before, or after July 1, 1990))~~,
24 pursuant to RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or
25 ~~((5))~~ (e) a person who at any time previously has been convicted of
26 a sexually violent offense and has since been released from total
27 confinement and has committed a recent overt act ~~((; and it appears that~~
28 ~~the person may be a sexually violent predator, the prosecuting attorney~~
29 ~~of the county where the person was convicted or charged or the attorney~~
30 ~~general if requested by the prosecuting attorney may file a petition~~
31 ~~alleging that the person is a "sexually violent predator" and stating~~
32 ~~sufficient facts to support such allegation))~~.

33 (2) The petition may be filed by:

34 (a) The prosecuting attorney of a county in which:

35 (i) The person has been charged or convicted with a sexually
36 violent offense;

1 (ii) A recent overt act occurred involving a person covered under
2 subsection (1)(e) of this section; or

3 (iii) The person committed a recent overt act, or was charged or
4 convicted of a criminal offense that would qualify as a recent overt
5 act, if the only sexually violent offense charge or conviction occurred
6 in a jurisdiction other than Washington; or

7 (b) The attorney general, if requested by the county prosecuting
8 attorney identified in (a) of this subsection. If the county
9 prosecuting attorney requests that the attorney general file and
10 prosecute a case under this chapter, then the county shall charge the
11 attorney general only the fees, including filing and jury fees, that
12 would be charged and paid by the county prosecuting attorney, if the
13 county prosecuting attorney retained the case.

14 **Sec. 4.** RCW 71.09.040 and 2001 c 286 s 6 are each amended to read
15 as follows:

16 (1) Upon the filing of a petition under RCW 71.09.030, the judge
17 shall determine whether probable cause exists to believe that the
18 person named in the petition is a sexually violent predator. If such
19 determination is made the judge shall direct that the person be taken
20 into custody.

21 (2) Within seventy-two hours after a person is taken into custody
22 pursuant to subsection (1) of this section, the court shall provide the
23 person with notice of, and an opportunity to appear in person at, a
24 hearing to contest probable cause as to whether the person is a
25 sexually violent predator. In order to assist the person at the
26 hearing, within twenty-four hours of service of the petition, the
27 prosecuting agency shall provide to the person or his or her counsel a
28 copy of all materials provided to the prosecuting agency by the
29 referring agency pursuant to RCW 71.09.025, or obtained by the
30 prosecuting agency pursuant to RCW 71.09.025(1) (c) and (d). At this
31 hearing, the court shall (a) verify the person's identity, and (b)
32 determine whether probable cause exists to believe that the person is
33 a sexually violent predator. At the probable cause hearing, the state
34 may rely upon the petition and certification for determination of
35 probable cause filed pursuant to RCW 71.09.030. The state may
36 supplement this with additional documentary evidence or live testimony.
37 The person may be held in total confinement at the county jail until

1 the trial court renders a decision after the conclusion of the seventy-
2 two hour probable cause hearing. The county shall be entitled to
3 reimbursement for the cost of housing and transporting the person
4 pursuant to rules adopted by the secretary.

5 (3) At the probable cause hearing, the person shall have the
6 following rights in addition to the rights previously specified: (a)
7 To be represented by counsel; (b) to present evidence on his or her
8 behalf; (c) to cross-examine witnesses who testify against him or her;
9 (d) to view and copy all petitions and reports in the court file. The
10 court must permit a witness called by either party to testify by
11 telephone. Because this is a special proceeding, discovery pursuant to
12 the civil rules shall not occur until after the hearing has been held
13 and the court has issued its decision.

14 (4) If the probable cause determination is made, the judge shall
15 direct that the person be transferred to an appropriate facility for an
16 evaluation as to whether the person is a sexually violent predator.
17 The evaluation shall be conducted by a person deemed to be
18 professionally qualified to conduct such an examination pursuant to
19 rules developed by the department of social and health services. In
20 adopting such rules, the department of social and health services shall
21 consult with the department of health and the department of
22 corrections. In no event shall the person be released from confinement
23 prior to trial. A witness called by either party shall be permitted to
24 testify by telephone.

25 **Sec. 5.** RCW 71.09.050 and 1995 c 216 s 5 are each amended to read
26 as follows:

27 (1) Within forty-five days after the completion of any hearing held
28 pursuant to RCW 71.09.040, the court shall conduct a trial to determine
29 whether the person is a sexually violent predator. The trial may be
30 continued upon the request of either party and a showing of good cause,
31 or by the court on its own motion in the due administration of justice,
32 and when the respondent will not be substantially prejudiced. At all
33 stages of the proceedings under this chapter, any person subject to
34 this chapter shall be entitled to the assistance of counsel, and if the
35 person is indigent, the court shall appoint counsel to assist him or
36 her. The person shall be confined in a secure facility for the
37 duration of the trial.

1 (2) Whenever any person is subjected to an examination under this
2 chapter, he or she may retain experts or professional persons to
3 perform an examination on their behalf. When the person wishes to be
4 examined by a qualified expert or professional person of his or her own
5 choice, such examiner shall be permitted to have reasonable access to
6 the person for the purpose of such examination, as well as to all
7 relevant medical and psychological records and reports. In the case of
8 a person who is indigent, the court shall, upon the person's request,
9 assist the person in obtaining an expert or professional person to
10 perform an examination or participate in the trial on the person's
11 behalf.

12 (3) The person, the prosecuting (~~attorney or attorney general~~)
13 agency, or the judge shall have the right to demand that the trial be
14 before a twelve-person jury. If no demand is made, the trial shall be
15 before the court.

16 **Sec. 6.** RCW 71.09.060 and 2008 c 213 s 13 are each amended to read
17 as follows:

18 (1) The court or jury shall determine whether, beyond a reasonable
19 doubt, the person is a sexually violent predator. In determining
20 whether or not the person would be likely to engage in predatory acts
21 of sexual violence if not confined in a secure facility, the fact
22 finder may consider only placement conditions and voluntary treatment
23 options that would exist for the person if unconditionally released
24 from detention on the sexually violent predator petition. The
25 community protection program under RCW 71A.12.230 may not be considered
26 as a placement condition or treatment option available to the person if
27 unconditionally released from detention on a sexually violent predator
28 petition. When the determination is made by a jury, the verdict must
29 be unanimous.

30 If, on the date that the petition is filed, the person was living
31 in the community after release from custody, the state must also prove
32 beyond a reasonable doubt that the person had committed a recent overt
33 act. If the state alleges that the prior sexually violent offense that
34 forms the basis for the petition for commitment was an act that was
35 sexually motivated as provided in RCW 71.09.020(15)(c), the state must
36 prove beyond a reasonable doubt that the alleged sexually violent act
37 was sexually motivated as defined in RCW 9.94A.030.

1 If the court or jury determines that the person is a sexually
2 violent predator, the person shall be committed to the custody of the
3 department of social and health services for placement in a secure
4 facility operated by the department of social and health services for
5 control, care, and treatment until such time as: (a) The person's
6 condition has so changed that the person no longer meets the definition
7 of a sexually violent predator; or (b) conditional release to a less
8 restrictive alternative as set forth in RCW 71.09.092 is in the best
9 interest of the person and conditions can be imposed that would
10 adequately protect the community.

11 If the court or unanimous jury decides that the state has not met
12 its burden of proving that the person is a sexually violent predator,
13 the court shall direct the person's release.

14 If the jury is unable to reach a unanimous verdict, the court shall
15 declare a mistrial and set a retrial within forty-five days of the date
16 of the mistrial unless the prosecuting agency earlier moves to dismiss
17 the petition. The retrial may be continued upon the request of either
18 party accompanied by a showing of good cause, or by the court on its
19 own motion in the due administration of justice provided that the
20 respondent will not be substantially prejudiced. In no event may the
21 person be released from confinement prior to retrial or dismissal of
22 the case.

23 (2) If the person charged with a sexually violent offense has been
24 found incompetent to stand trial, and is about to (~~be~~) be or has
25 been released pursuant to RCW 10.77.086(4), and his or her commitment
26 is sought pursuant to subsection (1) of this section, the court shall
27 first hear evidence and determine whether the person did commit the act
28 or acts charged if the court did not enter a finding prior to dismissal
29 under RCW 10.77.086(4) that the person committed the act or acts
30 charged. The hearing on this issue must comply with all the procedures
31 specified in this section. In addition, the rules of evidence
32 applicable in criminal cases shall apply, and all constitutional rights
33 available to defendants at criminal trials, other than the right not to
34 be tried while incompetent, shall apply. After hearing evidence on
35 this issue, the court shall make specific findings on whether the
36 person did commit the act or acts charged, the extent to which the
37 person's incompetence or developmental disability affected the outcome
38 of the hearing, including its effect on the person's ability to consult

1 with and assist counsel and to testify on his or her own behalf, the
2 extent to which the evidence could be reconstructed without the
3 assistance of the person, and the strength of the prosecution's case.
4 If, after the conclusion of the hearing on this issue, the court finds,
5 beyond a reasonable doubt, that the person did commit the act or acts
6 charged, it shall enter a final order, appealable by the person, on
7 that issue, and may proceed to consider whether the person should be
8 committed pursuant to this section.

9 (3) Except as otherwise provided in this chapter, the state shall
10 comply with RCW 10.77.220 while confining the person ((pursuant to this
11 chapter, except that)). During all court proceedings where the person
12 is present, the person shall be detained in a secure facility. If the
13 proceedings last more than one day, the person may be held in the
14 county jail for the duration of the proceedings, except the person may
15 be returned to the department's custody on weekends and court holidays
16 if the court deems such a transfer feasible. The county shall be
17 entitled to reimbursement for the cost of housing and transporting the
18 person pursuant to rules adopted by the secretary. The department
19 shall not place the person, even temporarily, in a facility on the
20 grounds of any state mental facility or regional habilitation center
21 because these institutions are insufficiently secure for this
22 population.

23 (4) A court has jurisdiction to order a less restrictive
24 alternative placement only after a hearing ordered pursuant to RCW
25 71.09.090 following initial commitment under this section and in accord
26 with the provisions of this chapter.

27 **Sec. 7.** RCW 71.09.080 and 1995 c 216 s 8 are each amended to read
28 as follows:

29 (1) Any person subjected to restricted liberty as a sexually
30 violent predator pursuant to this chapter shall not forfeit any legal
31 right or suffer any legal disability as a consequence of any actions
32 taken or orders made, other than as specifically provided in this
33 chapter, or as otherwise authorized by law.

34 (2) Any person committed pursuant to this chapter has the right to
35 adequate care and individualized treatment. The department of social
36 and health services shall keep records detailing all medical, expert,
37 and professional care and treatment received by a committed person, and

1 shall keep copies of all reports of periodic examinations made pursuant
2 to this chapter. All such records and reports shall be made available
3 upon request only to: The committed person, his or her attorney, the
4 prosecuting attorney, the court, the protection and advocacy agency, or
5 another expert or professional person who, upon proper showing,
6 demonstrates a need for access to such records.

7 (3) At the time a person is taken into custody or transferred into
8 a facility pursuant to a petition under this chapter, the professional
9 person in charge of such facility or his or her designee shall take
10 reasonable precautions to inventory and safeguard the personal property
11 of the persons detained or transferred. A copy of the inventory,
12 signed by the staff member making it, shall be given to the person
13 detained and shall, in addition, be open to inspection to any
14 responsible relative, subject to limitations, if any, specifically
15 imposed by the detained person. For purposes of this subsection,
16 "responsible relative" includes the guardian, conservator, attorney,
17 spouse, parent, adult child, or adult brother or sister of the person.
18 The facility shall not disclose the contents of the inventory to any
19 other person without consent of the patient or order of the court.

20 (4) Nothing in this chapter prohibits a person presently committed
21 from exercising a right presently available to him or her for the
22 purpose of obtaining release from confinement, including the right to
23 petition for a writ of habeas corpus.

24 (5) No indigent person may be conditionally released or
25 unconditionally discharged under this chapter without suitable
26 clothing, and the secretary shall furnish the person with such sum of
27 money as is required by RCW 72.02.100 for persons without ample funds
28 who are released from correctional institutions. As funds are
29 available, the secretary may provide payment to the indigent persons
30 conditionally released pursuant to this chapter consistent with the
31 optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules
32 to do so.

33 (6) If a civil commitment petition is dismissed, or a trier of fact
34 determines that a person does not meet civil commitment criteria, the
35 person shall be released within twenty-four hours of service of the
36 release order on the superintendent of the special commitment center,
37 or later by agreement of the person who is the subject of the petition.

1 **Sec. 8.** RCW 71.09.090 and 2005 c 344 s 2 are each amended to read
2 as follows:

3 (1) If the secretary determines that the person's condition has so
4 changed that either: (a) The person no longer meets the definition of
5 a sexually violent predator; or (b) conditional release to a less
6 restrictive alternative is in the best interest of the person and
7 conditions can be imposed that adequately protect the community, the
8 secretary shall authorize the person to petition the court for
9 conditional release to a less restrictive alternative or unconditional
10 discharge. The petition shall be filed with the court and served upon
11 the prosecuting agency responsible for the initial commitment. The
12 court, upon receipt of the petition for conditional release to a less
13 restrictive alternative or unconditional discharge, shall within forty-
14 five days order a hearing.

15 (2)(a) Nothing contained in this chapter shall prohibit the person
16 from otherwise petitioning the court for conditional release to a less
17 restrictive alternative or unconditional discharge without the
18 secretary's approval. The secretary shall provide the committed person
19 with an annual written notice of the person's right to petition the
20 court for conditional release to a less restrictive alternative or
21 unconditional discharge over the secretary's objection. The notice
22 shall contain a waiver of rights. The secretary shall file the notice
23 and waiver form and the annual report with the court. If the person
24 does not affirmatively waive the right to petition, the court shall set
25 a show cause hearing to determine whether probable cause exists to
26 warrant a hearing on whether the person's condition has so changed
27 that: (i) He or she no longer meets the definition of a sexually
28 violent predator; or (ii) conditional release to a proposed less
29 restrictive alternative would be in the best interest of the person and
30 conditions can be imposed that would adequately protect the community.

31 (b) The committed person shall have a right to have an attorney
32 represent him or her at the show cause hearing, which may be conducted
33 solely on the basis of affidavits or declarations, but the person is
34 not entitled to be present at the show cause hearing. At the show
35 cause hearing, the prosecuting attorney or attorney general shall
36 present prima facie evidence establishing that the committed person
37 continues to meet the definition of a sexually violent predator and
38 that a less restrictive alternative is not in the best interest of the

1 person and conditions cannot be imposed that adequately protect the
2 community. In making this showing, the state may rely exclusively upon
3 the annual report prepared pursuant to RCW 71.09.070. The committed
4 person may present responsive affidavits or declarations to which the
5 state may reply.

6 (c) If the court at the show cause hearing determines that either:
7 (i) The state has failed to present prima facie evidence that the
8 committed person continues to meet the definition of a sexually violent
9 predator and that no proposed less restrictive alternative is in the
10 best interest of the person and conditions cannot be imposed that would
11 adequately protect the community; or (ii) probable cause exists to
12 believe that the person's condition has so changed that: (A) The
13 person no longer meets the definition of a sexually violent predator;
14 or (B) release to a proposed less restrictive alternative would be in
15 the best interest of the person and conditions can be imposed that
16 would adequately protect the community, then the court shall set a
17 hearing on either or both issues.

18 (d) If the court has not previously considered the issue of release
19 to a less restrictive alternative, either through a trial on the merits
20 or through the procedures set forth in RCW 71.09.094(1), the court
21 shall consider whether release to a less restrictive alternative would
22 be in the best interests of the person and conditions can be imposed
23 that would adequately protect the community, without considering
24 whether the person's condition has changed. The court may not find
25 probable cause for a trial addressing less restrictive alternatives
26 unless a proposed less restrictive alternative placement meeting the
27 conditions of RCW 71.09.092 is presented to the court at the show cause
28 hearing.

29 (3)(a) At the hearing resulting from subsection (1) or (2) of this
30 section, the committed person shall be entitled to be present and to
31 the benefit of all constitutional protections that were afforded to the
32 person at the initial commitment proceeding. The prosecuting agency
33 (~~or the attorney general if requested by the county~~) shall represent
34 the state and shall have a right to a jury trial and to have the
35 committed person evaluated by experts chosen by the state. The
36 committed person shall also have the right to a jury trial and the
37 right to have experts evaluate him or her on his or her behalf and the

1 court shall appoint an expert if the person is indigent and requests an
2 appointment.

3 (b) If the issue at the hearing is whether the person should be
4 unconditionally discharged, the burden of proof shall be upon the state
5 to prove beyond a reasonable doubt that the committed person's
6 condition remains such that the person continues to meet the definition
7 of a sexually violent predator. Evidence of the prior commitment trial
8 and disposition is admissible. The recommitment proceeding shall
9 otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

10 (c) If the issue at the hearing is whether the person should be
11 conditionally released to a less restrictive alternative, the burden of
12 proof at the hearing shall be upon the state to prove beyond a
13 reasonable doubt that conditional release to any proposed less
14 restrictive alternative either: (i) Is not in the best interest of the
15 committed person; or (ii) does not include conditions that would
16 adequately protect the community. Evidence of the prior commitment
17 trial and disposition is admissible.

18 (4)(a) Probable cause exists to believe that a person's condition
19 has "so changed," under subsection (2) of this section, only when
20 evidence exists, since the person's last commitment trial, or less
21 restrictive alternative proceeding, of a substantial change in the
22 person's physical or mental condition such that the person either no
23 longer meets the definition of a sexually violent predator or that a
24 conditional release to a less restrictive alternative is in the
25 person's best interest and conditions can be imposed to adequately
26 protect the community.

27 (b) A new trial proceeding under subsection (3) of this section may
28 be ordered, or a trial proceeding may be held, only when there is
29 current evidence from a licensed professional of one of the following
30 and the evidence presents a change in condition since the person's last
31 commitment trial proceeding:

32 (i) An identified physiological change to the person, such as
33 paralysis, stroke, or dementia, that renders the committed person
34 unable to commit a sexually violent act and this change is permanent;
35 or

36 (ii) A change in the person's mental condition brought about
37 through positive response to continuing participation in treatment

1 which indicates that the person meets the standard for conditional
2 release to a less restrictive alternative or that the person would be
3 safe to be at large if unconditionally released from commitment.

4 (c) For purposes of this section, a change in a single demographic
5 factor, without more, does not establish probable cause for a new trial
6 proceeding under subsection (3) of this section. As used in this
7 section, a single demographic factor includes, but is not limited to,
8 a change in the chronological age, marital status, or gender of the
9 committed person.

10 (5) The jurisdiction of the court over a person civilly committed
11 pursuant to this chapter continues until such time as the person is
12 unconditionally discharged.

13 **Sec. 9.** RCW 71.09.092 and 1995 c 216 s 10 are each amended to read
14 as follows:

15 Before the court may enter an order directing conditional release
16 to a less restrictive alternative, it must find the following: (1) The
17 person will be treated by a treatment provider who is qualified to
18 provide such treatment in the state of Washington under chapter 18.155
19 RCW; (2) the treatment provider has presented a specific course of
20 treatment and has agreed to assume responsibility for such treatment
21 and will report progress to the court on a regular basis, and will
22 report violations immediately to the court, the prosecutor, the
23 supervising community corrections officer, and the superintendent of
24 the special commitment center; (3) housing exists in Washington that is
25 sufficiently secure to protect the community, and the person or agency
26 providing housing to the conditionally released person has agreed in
27 writing to accept the person, to provide the level of security required
28 by the court, and immediately to report to the court, the prosecutor,
29 the supervising community corrections officer, and the superintendent
30 of the special commitment center if the person leaves the housing to
31 which he or she has been assigned without authorization; (4) the person
32 is willing to comply with the treatment provider and all requirements
33 imposed by the treatment provider and by the court; and (5) the person
34 will be under the supervision of the department of corrections and is
35 willing to comply with supervision requirements imposed by the
36 department of corrections.

1 **Sec. 10.** RCW 71.09.096 and 2001 c 286 s 12 are each amended to
2 read as follows:

3 (1) If the court or jury determines that conditional release to a
4 less restrictive alternative is in the best interest of the person and
5 includes conditions that would adequately protect the community, and
6 the court determines that the minimum conditions set forth in RCW
7 71.09.092 and in this section are met, the court shall enter judgment
8 and direct a conditional release.

9 (2) The court shall impose any additional conditions necessary to
10 ensure compliance with treatment and to protect the community. If the
11 court finds that conditions do not exist that will both ensure the
12 person's compliance with treatment and protect the community, then the
13 person shall be remanded to the custody of the department of social and
14 health services for control, care, and treatment in a secure facility
15 as designated in RCW 71.09.060(1).

16 (3) If the service provider designated by the court to provide
17 inpatient or outpatient treatment or to monitor or supervise any other
18 terms and conditions of a person's placement in a less restrictive
19 alternative is other than the department of social and health services
20 or the department of corrections, then the service provider so
21 designated must agree in writing to provide such treatment, monitoring,
22 or supervision in accord with this section. Any person providing or
23 agreeing to provide treatment, monitoring, or supervision services
24 pursuant to this chapter may be compelled to testify and any privilege
25 with regard to such person's testimony is deemed waived.

26 (4) Prior to authorizing any release to a less restrictive
27 alternative, the court shall impose such conditions upon the person as
28 are necessary to ensure the safety of the community. The court shall
29 order the department of corrections to investigate the less restrictive
30 alternative and recommend any additional conditions to the court.
31 These conditions shall include, but are not limited to the following:
32 Specification of residence, prohibition of contact with potential or
33 past victims, prohibition of alcohol and other drug use, participation
34 in a specific course of inpatient or outpatient treatment that may
35 include monitoring by the use of polygraph and plethysmograph,
36 monitoring through the use of global positioning satellite technology,
37 supervision by a department of corrections community corrections
38 officer, a requirement that the person remain within the state unless

1 the person receives prior authorization by the court, and any other
2 conditions that the court determines are in the best interest of the
3 person or others. A copy of the conditions of release shall be given
4 to the person and to any designated service providers.

5 (5) Any service provider designated to provide inpatient or
6 outpatient treatment shall monthly, or as otherwise directed by the
7 court, submit to the court, to the department of social and health
8 services facility from which the person was released, to the
9 (~~prosecutor of the county in which the person was found to be a~~
10 ~~sexually violent predator~~) prosecuting agency, and to the supervising
11 community corrections officer, a report stating whether the person is
12 complying with the terms and conditions of the conditional release to
13 a less restrictive alternative.

14 (6) Each person released to a less restrictive alternative shall
15 have his or her case reviewed by the court that released him or her no
16 later than one year after such release and annually thereafter until
17 the person is unconditionally discharged. Review may occur in a
18 shorter time or more frequently, if the court, in its discretion on its
19 own motion, or on motion of the person, the secretary, or the
20 prosecuting (~~attorney~~) agency so determines. The sole question to be
21 determined by the court is whether the person shall continue to be
22 conditionally released to a less restrictive alternative. Absent the
23 written agreement of the parties, the court may not modify the
24 conditional release order through the annual review process. The court
25 in making its determination shall be aided by the periodic reports
26 filed pursuant to subsection (5) of this section and the opinions of
27 the secretary and other experts or professional persons.

28 **Sec. 11.** RCW 71.09.098 and 2006 c 282 s 1 are each amended to read
29 as follows:

30 (~~(1) Any service provider submitting reports pursuant to RCW~~
31 ~~71.09.096(6), the supervising community corrections officer, the~~
32 ~~prosecuting attorney, or the attorney general may petition the court,~~
33 ~~or the court on its own motion may schedule an immediate hearing, for~~
34 ~~the purpose of revoking or modifying the terms of the person's~~
35 ~~conditional release to a less restrictive alternative if the petitioner~~
36 ~~or the court believes the released person is not complying with the~~

1 ~~terms and conditions of his or her release or is in need of additional~~
2 ~~care, monitoring, supervision, or treatment.~~

3 ~~(2) If the prosecuting attorney, the supervising community~~
4 ~~corrections officer, or the court, based upon information received by~~
5 ~~them, reasonably believes that a conditionally released person is not~~
6 ~~complying with the terms and conditions of his or her conditional~~
7 ~~release to a less restrictive alternative, the court or community~~
8 ~~corrections officer may order that the conditionally released person be~~
9 ~~apprehended and taken into custody until such time as a hearing can be~~
10 ~~scheduled to determine the facts and whether or not the person's~~
11 ~~conditional release should be revoked or modified. A law enforcement~~
12 ~~officer, who has responded to a request for assistance from a~~
13 ~~department employee, may apprehend and take into custody the~~
14 ~~conditionally released person if the law enforcement officer reasonably~~
15 ~~believes that the conditionally released person is not complying with~~
16 ~~the terms and conditions of his or her conditional release to a less~~
17 ~~restrictive alternative. The conditionally released person may be~~
18 ~~detained in the county jail or returned to the secure community~~
19 ~~transition facility. The court shall be notified before the close of~~
20 ~~the next judicial day of the person's apprehension. Both the~~
21 ~~prosecuting attorney and the conditionally released person shall have~~
22 ~~the right to request an immediate mental examination of the~~
23 ~~conditionally released person. If the conditionally released person is~~
24 ~~indigent, the court shall, upon request, assist him or her in obtaining~~
25 ~~a qualified expert or professional person to conduct the examination.~~

26 ~~(3) The court, upon receiving notification of the person's~~
27 ~~apprehension, shall promptly schedule a hearing. The issue to be~~
28 ~~determined is whether the state has proven by a preponderance of the~~
29 ~~evidence that the conditionally released person did not comply with the~~
30 ~~terms and conditions of his or her release. Hearsay evidence is~~
31 ~~admissible if the court finds it otherwise reliable. At the hearing,~~
32 ~~the court shall determine whether the person shall continue to be~~
33 ~~conditionally released on the same or modified conditions or whether~~
34 ~~his or her conditional release shall be revoked and he or she shall be~~
35 ~~committed to total confinement, subject to release only in accordance~~
36 ~~with provisions of this chapter.))~~

37 (1) Any service provider submitting reports pursuant to RCW
38 71.09.096(6), the supervising community corrections officer, the

1 prosecuting agency, or the secretary's designee may petition the court
2 for an immediate hearing for the purpose of revoking or modifying the
3 terms of the person's conditional release to a less restrictive
4 alternative if the petitioner believes the released person (a) violated
5 or is in violation of the terms and conditions of the court's
6 conditional release order or (b) is in need of additional care,
7 monitoring, supervision, or treatment.

8 (2) The community corrections officer or the secretary's designee
9 may restrict the person's movement in the community until the petition
10 is determined by the court. The person may be taken into custody if:

11 (a) The supervising community corrections officer, the secretary's
12 designee, or a law enforcement officer reasonably believes the person
13 has violated or is in violation of the court's conditional release
14 order; or

15 (b) The supervising community corrections officer or the
16 secretary's designee reasonably believes that the person is in need of
17 additional care, monitoring, supervision, or treatment because the
18 person presents a danger to himself or herself or others if his or her
19 conditional release under the conditions imposed by the court's release
20 order continues.

21 (3) Persons taken into custody pursuant to subsection (2) of this
22 section shall:

23 (a) Not be released until such time as a hearing is held to
24 determine whether to revoke or modify the person's conditional release
25 order and the court has issued its decision;

26 (b) Be held in the county jail, at a secure community transition
27 facility, or at the total confinement facility, at the discretion of
28 the secretary's designee.

29 The court shall be notified before the close of the next judicial
30 day that the person has been taken into custody and shall promptly
31 schedule a hearing.

32 (4) Before any hearing to revoke or modify the person's conditional
33 release order, both the prosecuting agency and the released person
34 shall have the right to request an immediate mental examination of the
35 released person. If the conditionally released person is indigent, the
36 court shall, upon request, assist him or her in obtaining a qualified
37 expert or professional person to conduct the examination.

1 (5) At any hearing to revoke or modify the conditional release
2 order:

3 (a) The prosecuting agency shall represent the state, including
4 determining whether to proceed with revocation or modification of the
5 conditional release order;

6 (b) Hearsay evidence is admissible if the court finds that it is
7 otherwise reliable; and

8 (c) The state shall bear the burden of proving by a preponderance
9 of the evidence that the person has violated or is in violation of the
10 court's conditional release order or that the person is in need of
11 additional care, monitoring, supervision, or treatment.

12 (6) If the court determines that the state has met its burden
13 referenced in subsection (5)(c) of this section, and the issue before
14 the court is revocation of the court's conditional release order, the
15 court shall consider the evidence presented by the parties and the
16 following factors relevant to whether continuing the person's
17 conditional release is in the person's best interests or adequate to
18 protect the community:

19 (a) The nature of the condition that was violated by the person or
20 that the person was in violation of in the context of the person's
21 criminal history and underlying mental conditions;

22 (b) The degree to which the violation was intentional or grossly
23 negligent;

24 (c) The ability and willingness of the released person to strictly
25 comply with the conditional release order;

26 (d) The degree of progress made by the person in community-based
27 treatment; and

28 (e) The risk to the public or particular persons if the conditional
29 release continues under the conditional release order that was
30 violated.

31 Any factor alone, or in combination, shall support the court's
32 determination to revoke the conditional release order.

33 (7) If the court determines the state has met its burden referenced
34 in subsection (5)(c) of this section, and the issue before the court is
35 modification of the court's conditional release order, the court shall
36 modify the conditional release order by adding conditions if the court
37 determines that the person is in need of additional care, monitoring,
38 supervision, or treatment. The court has authority to modify its

1 conditional release order by substituting a new treatment provider,
2 requiring new housing for the person, or imposing such additional
3 supervision conditions as the court deems appropriate. The court shall
4 not reduce or eliminate supervision conditions in its release order
5 without the agreement of the person and the prosecuting agency.

6 (8) A person whose conditional release has been revoked shall be
7 remanded to the custody of the secretary for control, care, and
8 treatment in a total confinement facility as designated in RCW
9 71.09.060(1). The person is thereafter eligible for conditional
10 release only in accord with the provisions of RCW 71.09.090 and related
11 statutes.

12 NEW SECTION. Sec. 12. A new section is added to chapter 71.09 RCW
13 to read as follows:

14 The department of social and health services shall provide to the
15 prosecuting agency a copy of all reports made by the department to law
16 enforcement in which a person detained or committed under this chapter
17 is named or listed as a suspect, witness, or victim, as well as a copy
18 of all reports received from law enforcement.

19 **Sec. 13.** RCW 71.09.112 and 2002 c 19 s 1 are each amended to read
20 as follows:

21 A person subject to court order under the provisions of this
22 chapter who is thereafter convicted of a criminal offense remains under
23 the jurisdiction of the department and shall be returned to the custody
24 of the department following: (1) Completion of the criminal sentence;
25 or (2) release from confinement in a state, federal, or local
26 correctional facility(~~(, and shall be returned to the custody of the~~
27 ~~department)~~). Any conditional release order shall be immediately
28 revoked upon conviction for a criminal offense.

29 This section does not apply to persons subject to a court order
30 under the provisions of this chapter who are thereafter sentenced to
31 life without the possibility of release.

32 **Sec. 14.** RCW 71.09.350 and 2004 c 38 s 14 are each amended to read
33 as follows:

34 (1) Examinations and treatment of sexually violent predators who
35 are conditionally released to a less restrictive alternative under this

1 chapter shall be conducted only by certified sex offender treatment
2 providers or certified affiliate sex offender treatment providers under
3 chapter 18.155 RCW unless the court or the department of social and
4 health services finds that: (a) The ~~((court-ordered less restrictive
5 alternative placement is located in another state; (b) the))~~ treatment
6 provider is employed by the department; or ~~((+e+))~~ (b)(i) all certified
7 sex offender treatment providers or certified affiliate sex offender
8 treatment providers become unavailable to provide treatment within a
9 reasonable geographic distance of the person's home, as determined in
10 rules adopted by the department of social and health services; and (ii)
11 the evaluation and treatment plan comply with the rules adopted by the
12 department of social and health services.

13 A treatment provider approved by the department of social and
14 health services under ~~((+e+))~~ (b) of this subsection, who is not
15 certified by the department of health, shall consult with a certified
16 sex offender treatment provider during the person's period of treatment
17 to ensure compliance with the rules adopted by the department of
18 health. The frequency and content of the consultation shall be based
19 on the recommendation of the certified sex offender treatment provider.

20 (2) A treatment provider, whether or not he or she is employed or
21 approved by the department of social and health services under
22 subsection (1) of this section or otherwise certified, may not perform
23 or provide treatment of sexually violent predators under this section
24 if the treatment provider has been:

25 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

26 (b) Convicted in any other jurisdiction of an offense that under
27 the laws of this state would be classified as a sex offense as defined
28 in RCW 9.94A.030; or

29 (c) Suspended or otherwise restricted from practicing any health
30 care profession by competent authority in any state, federal, or
31 foreign jurisdiction.

32 (3) Nothing in this section prohibits a qualified expert from
33 examining or evaluating a sexually violent predator who has been
34 conditionally released for purposes of presenting an opinion in court
35 proceedings.

36 NEW SECTION. **Sec. 15.** This act applies to all persons currently

1 committed or awaiting commitment under chapter 71.09 RCW either on,
2 before, or after the effective date of this act, whether confined in a
3 secure facility or on conditional release.

4 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of the
6 state government and its existing public institutions, and takes effect
7 immediately.

8 NEW SECTION. **Sec. 17.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

--- END ---